


JUL 20 2006

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

MARK LAMONT NEAMO,
Petitioner,

v.

DIRECTOR, VDOC,
Respondent.

Civil Action No. 7:06-cv-00288

ORDER

By: Hon. James C. Turk
Senior United States District Judge

Upon review of the record, the court finds it appropriate to amend the memorandum opinion entered June 26, 2006, to correct a calculation error. Accordingly, it is hereby

ORDERED

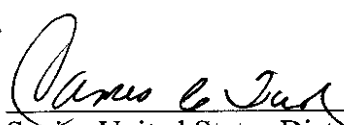
that the memorandum opinion entered in this case on June 26, 2006, is hereby **AMENDED** such that the first paragraph of Section III (on Page 3) of the opinion shall now read as follows:

Neamo clearly filed this § 2254 petition late under § 2244(d)(1)(A). His conviction became final on or about September 23, 2002, when his 30-day period to file an appeal expired. See Virginia Code § 8.01-675.3; United States v. Clay, 537 U.S. 522 (2003). On that date, the one-year federal statutory period under § 2244(d)(1)(A) began running. That period ended on September 23, 2003. Neamo's first federal habeas petition, filed on September 3, 2003, did not toll the filing period under § 2244(d) because the period is tolled only by state post-conviction proceedings. § 2244(d)(2); Duncan v. Walker, 531 U.S. 991 (2001). Neamo's circuit court habeas petition, filed on July 25, 2004, did not toll the federal filing period because it was not filed until after the period expired. Neamo did not execute his federal habeas petition until April 2006, well after the time allotted under § 2244(d)(1)(A).

This amendment does not affect the judgment of the court.

The Clerk is directed to send certified copies of this order to petitioner and to counsel of record for the respondent.

ENTER: This 20th day of July, 2006.


Senior United States District Judge